



# United States Department of the Interior

## NATIONAL PARK SERVICE

1849 C Street, N.W.  
Washington, D.C. 20240

IN REPLY REFER TO:

SEP 26 2011

Re: **Fairmont Creamery Company Building, Rapid City, South Dakota**  
Project Number: **23256**

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), denying certification of the rehabilitation of the property cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank \_\_\_\_\_ for meeting with me in Washington on September 12, 2011, and for providing a detailed account of the project. I also thank \_\_\_\_\_ for participating in the meeting via conference call.

After careful review of the complete record for this project, including the information presented at the appeal meeting, I have determined that the rehabilitation of the Fairmont Creamery Company Building is not consistent with the historic character of the property, and that the project does not meet Standards 6 and 9 of the Secretary of the Interior's Standards for Rehabilitation (the Standards). Therefore, the denial issued by TPS on December 6, 2010, is hereby affirmed. However, I have further determined that the project could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

Built 1928 – 1929 and expanded in 1940 and 1962, the Fairmont Creamery Company Building was individually listed in the National Register of Historic Places on February 14, 2006. The in-progress (and still ongoing) rehabilitation of the building was found not to meet the Standards owing to the installation of new windows determined to be incompatible with the historic character of this “certified historic structure.”

I agree with TPS that the new windows installed do not match the historic ones evident in photographs or the ones still extant in places in former exterior walls that were incorporated into the later additions. Nor are the new windows, even if considered as new features, compatible with the historic industrial character of this early 20<sup>th</sup>-century building. The windows have flat muntin grids set between two sheets of glass; hence, the term “sandwich muntins.” The result is an uncharacteristically flat and reflective “glassy” appearance that becomes a prominent new and discordant feature. Additionally, as TPS noted, the frames are overly large; this is especially noticeable with the inset hopper units in the new windows on the south

elevation. As a result, the new windows cause the rehabilitation not to meet Standard 6, which states, in part: *"Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence."* Alternatively considered as new features, the windows installed here fail to meet Standard 9, which states: *"New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."*

The shortcomings in the new windows noted here also apply to the new window and door infill of the former loading dock opening in the south elevation. This infill is more in keeping with a commercial storefront than with an industrial plant. In addition, sandwich muntins—matching those used in the new windows—create the same incompatible visual appearance as the windows. As a result, this aspect of the rehabilitation also falls short of Standard 9.

I acknowledge that TPS did not cite this last item in the conditions it imposed for approval in its letter of May 26, 2009. However, Department of the Interior regulations governing the historic preservation tax incentives program stipulate that, *"The Chief Appeals Officer may base his decision in whole or part on matters or factors not discussed in the decision appealed from."* [36 CFR § 67.10(c)]. Further, I note that the loading dock infill was already finished before that letter was written, as evidenced by photographs 9 and 10 of "Suite 103," dated April 2008. Consequently, you did not rely on the May 26, 2009, decision to your detriment.

While the project as completed to date cannot be approved for the reasons set forth above, I find that the deficiencies noted could be remedied so that the rehabilitation would meet the Standards. With regard to the incompatible replacement windows, new windows that match the available physical and photographic evidence must be installed. I have determined that this change would allow the windows to comply with Standard 6 and, by extension, would not conflict with the requirements of Standard 9.

With regard to the loading dock openings, the new infill replaces what historically were industrial doors for which no physical evidence remains. Thus, unlike the windows, where there is available evidence, the loading dock infill only has to be compatible with the overall industrial character of the building. Since the infill generally appears as a dark void (as if the large door expected to be seen there were left open), I have determined that the visual appearance would comply with Standard 9 if, 1) exterior muntins were applied to the new windows, and, 2) the new door and transom above it are replaced with a new full-height door with a muntin grid matching the adjacent window muntins. I have determined that these two changes would allow the loading dock infill to comply with Standard 9.

If you choose to proceed with the corrective measures described above, prior to undertaking further work, please submit a Part 2 amendment, with detailed drawings of the proposed new windows and the replacement door and applied muntins for the loading dock infill, to this office, Attention:

with a copy to the South Dakota State Historical Society. Note that this project will remain ineligible for the tax incentives until it is designated a "certified rehabilitation" following completion of the overall project.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the December 6, 2010, denial that TPS issued regarding rehabilitation certification. Please note that this decision is limited to the work that was the subject of the denial. All future work, including replacing other windows or infilling other loading dock openings, must be submitted to TPS for review and approval. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

**John A. Burns**

John A. Burns, FAIA  
Chief Appeals Officer  
Cultural Resources

cc: SHPO-SD  
IRS